

JAMES McNAIR THOMPSON  
SBN 67807  
LAW OFFICES OF JAMES McNAIR THOMPSON  
PO BOX 636  
LOS GATOS CA 95031  
(408) 358-6047

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	Case No.: 13-CR-00224-EJD
	)	
Plaintiff,	)	STIPULATION AND <del>PROPOSED</del>
	)	ORDER VACATING THE DETENTION
vs.	)	OF ANTONIO PACHECO - ZAVALA
	)	AS A MATERIAL WITNESS
	)	
JAVIER MARTINEZ MONTECINOS	)	
ROSALES and	)	
VICTOR CERNAS	)	
	)	
Defendant	)	

ANTONIO PACHECO-ZAVALA is detained in the above-captioned matter as a material witness.

ANTONIO PACHECO-ZAVALA is represented by James McNair Thompson, who has consulted with ANTONIO PACHECO-ZAVALA and is authorized to make the representations made herein, and made in the attached Declaration of James McNair Thompson.

If called as a witness at the trial of this matter, or at a deposition convened pursuant to 18 U.S.C. §3144 or Fed. R. Crim. P. Rule 15, ANTONIO PACHECO-ZAVALA would invoke his right under the 5<sup>th</sup> Amendment to the United States

1 Constitution to refuse to answer any question relevant to the above-captioned  
2 criminal proceeding.

3 Because ANTONIO PACHECO-ZAVALA would invoke his rights to refuse  
4 to answer any question in this proceeding, whether at trial or at a deposition, the  
5 testimony of ANTONIO PACHECO-ZAVALA is no longer material in this  
6 criminal proceeding.

7 Accordingly, the parties stipulate that good cause exists to terminate  
8 ANTONIO PACHECO-ZAVALA's detention pursuant to 18 U.S.C. §3144, and to  
9 release him from his custodial status as a material witness.

10 Upon entry of the proposed order, the hearing on detained witness' April 26,  
11 2013 motion for a deposition will be moot, so the parties further stipulate that at  
12 such time as the proposed order is signed, the motion may be taken off calendar.

13 IT IS SO STIPULATED.

14 Dated: April 10, 2013

15 Respectfully submitted,  
16 MELINDA HAAG  
17 United States Attorney  
18 /s/

19 \_\_\_\_\_  
20 GARY G. FRY  
21 Assistant United States Attorney

22 Dated: April 10, 2013

23 /s/ \_\_\_\_\_  
24 MICHELLE DEE SPENCER  
25 Attorney for Javier Martinez Montecinos  
Rosales

Dated: April 10, 2013

/s/ \_\_\_\_\_  
THOMAS J. FERRITO  
Attorney for Victor Cernas

1  
2  
3  
4 Dated: April 10, 2013

5 /s/ \_\_\_\_\_  
6 JAMES MCNAIR THOMPSON  
7 Attorney for Francisco Reyes De La Cruz

8 **DECLARATION OF JAMES McNAIR THOMPSON**

9 I, James McNair Thompson, declare:

10 1. I am now and at all relevant times have been duly licensed to practice law  
11 in the State of California and admitted to practice before the Federal District Court  
12 for the Northern District of California.

13 2. On April 2, 2013, I was provisionally appointed pursuant to CJA to  
14 represent ANTONIO PACHECO-ZAVALA in his capacity as a potential material  
15 witness subject to detention in the above-captioned matter, and on April 8, 2013 my  
16 appointment was confirmed.

17 3. I have reviewed the discovery available in the above-captioned case,  
18 including reports of the events of March 22, 2013, and discussed those reports with  
19 ANTONIO PACHECO-ZAVALA.

20 4. It is my opinion that ANTONIO PACHECO-ZAVALA has a legitimate,  
21 well founded basis under the 5<sup>th</sup> Amendment to the United States Constitution, to  
22 decline to answer any question relevant to the above – captioned matter.

23 5. If ANTONIO PACHECO-ZAVALA is asked any question relevant to  
24 the above – captioned matter, I would advise him to decline to answer the question  
25 on the ground that the 5<sup>th</sup> Amendment affords him the right to decline.

6. I am informed and believe that if I advise ANTONIO PACHECO-ZAVALA to decline to answer any question, he will in fact decline to answer the question.

7. In view of the foregoing, it is my opinion that the testimony of ANTONIO PACHECO-ZAVALA is not material in this criminal proceeding, in that it would consist solely of the invocation of his rights under the 5<sup>th</sup> Amendment, whether such testimony was adduced at a trial or at a deposition convened pursuant to Fed. R. Crim. P. Rule 15(a)(2).

I declare under penalty of perjury that the foregoing is true and correct;  
executed this 9<sup>th</sup> day of April, 2013 at Los Gatos, California

James McNair Thompson

~~[PROPOSED]~~ ORDER

Based on the foregoing, and for good cause appearing,

**IT IS HEREBY ORDERED** that the Order of Detention of ANTONIO  
PACHECO-ZAVALA made on April 8, 2013 is hereby vacated, and the defendant  
is hereby released from custody in this case, and available for service on such  
detainers as may exist, or if none, release from custody.

1 The motion by detained witness ANTONIO PACHECO-ZAVALA to compel  
2 a deposition, set for April 26, 2013 at 9:30 a.m., is hereby taken off calendar as  
3 moot.

4 DATED: April 22, 2013

5  
6 

7 PAUL S. GREWAL

8 United States Magistrate Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25